

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY J. WESTHOFF : CIVIL ACTION
v. : NO. 09-501
ERICKA T. MORAN, et al. :
:

ORDER

And now this 13th day of May, 2009, upon careful and independent review of the petition for a writ of habeas corpus, it is hereby ORDERED that:

1. The Report and Recommendation of Magistrate Judge L. Felipe Restrepo is APPROVED and ADOPTED;¹
2. The petition for a writ of *habeas corpus* is DENIED with prejudice;
3. There is no probable cause to issue a certificate of appealability; and,
4. The Clerk of the Court shall mark this case closed for statistical purposes.

BY THE COURT:

\s\ Juan R. Sánchez _____ J.
Juan R. Sánchez

¹Magistrate Judge Restrepo's thorough Report properly recommended denying Petitioner's writ because he was not in custody as required by 28 U.S.C. § 2254 for the incarceration he was challenging, but was in custody on an unrelated matter. Petitioner is no longer in custody on any matter; thus, habeas review is not even arguably available to him. *Barry v. Bergen County Probat'n Dept.*, 128 F.3d 152, 160 (3d Cir. 1997).